

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARLENE HOPKINS, individually, :
as Wrongful Death Heir, and as :
Successor-in-Interest to :
NORMAN HOPKINS, JR., Deceased; :
and MICHELLE HOPKINS, and :
MICHAEL HOPKINS, as Legal :
Heirs of NORMAN HOPKINS, :
Deceased, THE FLINTKOTE :
COMPANY, THE OFFICIAL :
COMMITTEE OF THE ASBESTOS :
PERSONAL INJURY CLAIMANTS, :
and JAMES J. McMONAGLE as the :
LEGAL REPRESENTATIVE FOR :
FUTURE ASBESTOS PERSONAL :
INJURY CLAIMANTS, :
:
Plaintiffs, :
:
v. : Civil Action No. 06-298-JJF
:
PLANT INSULATION COMPANY; :
UNIROYAL HOLDING, INC.; :
IMPERIAL TOBACCO CANADA :
LIMITED; SULLIVAN & CROMWELL :
LLP; and DOES 1 through 100, :
:
Defendants. :

MEMORANDUM ORDER

Pending before the Court is an Emergency Motion Of Imperial Tobacco Canada Limited For Immediate Entry Of A Provisional Order Or, In The Alternative, An Expedited Hearing Regarding Its Emergency Petition For An Order Of Transfer Pursuant To 28 U.S.C. § 157(b)(5) (D.I. 9). By its Motion, Imperial Tobacco Canada Limited ("ITCAAN") requests the Court to enter, on an emergency basis, a provisional order transferring this case from the United States District Court for the Northern District of California (the "California court") to this Court pursuant to 28 U.S.C. §

157(b)(5), because Flintkote's bankruptcy is pending in the United States Bankruptcy Court for the District of Delaware. ITCAAN contends that a provisional transfer will protect the Court's jurisdiction over this action and prevent conflicting decisions from the California Court on two issues pending there, i.e. whether to transfer the case to this Court, or whether to remand this case to the California state courts. Those issues are scheduled to be heard by the California court on June 19, 2006.

The Flintkote Company ("Flintkote") has filed a Response to the Motion contending that this matter does not present an emergency issue, and a provisional transfer order is not necessary. Flintkote contends that pursuant to 28 U.S.C. § 157(b)(5), the Court can transfer this case regardless of whether the California court remands the action to the California state courts. Flintkote also contends that, as a substantive matter, transfer of this case is not warranted, and therefore a provisional transfer order is not required.

After reviewing the parties' submissions, the Court concludes that a provisional transfer order and an expedited hearing on the underlying transfer petition are not warranted. While the Court declines to address the merits of the transfer petition until it has been fully briefed, the Court notes that Flintkote filed its Answer Brief on May 19, 2006. The Court will

set a Reply Brief deadline of no later than May 31, 2006, for ITCAAN so that this matter can be fully briefed and adjudicated by the Court before the June 19 hearing date scheduled in the California court. The Court also notes that the Court may consider the transfer of this case under Section 157(b) regardless of the decisions reached by the California court on the transfer and remand issues, and therefore, the Court is not persuaded that these proceedings should be characterized as "emergency" matters. See In re Pan Am. Corp., 16 F.3d 513 (2d Cir. 1994).

NOW THEREFORE IT IS HEREBY ORDERED that:

1. The Emergency Motion Of Imperial Tobacco Canada Limited For Immediate Entry Of A Provisional Order Or, In The Alternative, An Expedited Hearing Regarding Its Emergency Petition For An Order Of Transfer Pursuant To 28 U.S.C. § 157(b)(5) is **DENIED**.

2. Imperial Tobacco Canada Limited shall file its Reply Brief to its Emergency Petition For An Order Of Transfer Pursuant To 28 U.S.C. 175(b)(5) **no later than Wednesday, May 31, 2006.**

May 22, 2006
Date

Joseph J. Fawcett
UNITED STATES DISTRICT JUDGE